

# In the Court of Appeals of the State of Alaska

**John Albert Scudero Jr.,**

Appellant,

v.

**State of Alaska,**

Appellee.

)  
) Court of Appeals No. **A-12729**  
)

## **Order**

)  
) Certifying Appeal to the  
) Supreme Court  
)

) Date of Order: **August 5, 2019**  
)

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Trial Court Case # **1KE-14-00672CR**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

John Albert Scudero Jr. is a member of the Metlakatla Indian Community, and he lives on the Annette Islands Reserve. The Metlakatla Indian Community is a federally recognized tribe. Scudero appeals his convictions in the district court for commercial fishing without a CFEC permit, commercial fishing in closed waters, and unlawful possession of illegally taken fish.

On appeal, Scudero primarily contends that federal statutes and case law, as well as a Presidential proclamation, provide the Metlakatla Indian Community with unfettered aboriginal fishing rights within their “historic domain” — that is, within all of the coastal waters of the State of Alaska. Scudero also asserts that none of the Metlakatla Indian Community’s “indigenous, sovereign, and historic” fishing rights were extinguished by the Alaska Native Claims Settlement Act of 1971 because the community “did not join with the other tribes in signing the treaty[.]” Scudero thus argues that the State of Alaska has no jurisdiction over him, and lacks the authority to

limit his ability to fish in the coastal waters of Alaska, or to prosecute him for fishing in those waters.

Under AS 22.05.015(b), the Alaska Supreme Court may take jurisdiction of a case pending before this Court if this Court certifies that “the case involves a significant question of law under the Constitution of the United States or under the constitution of [Alaska],” or if the case “involves an issue of substantial public interest that should be determined by the supreme court.”

We believe that the jurisdictional issue raised by Scudero involves a significant question of law under the Alaska constitution and “an issue of substantial public interest that should be determined by the supreme court.” We come to this conclusion for two reasons.

First, the issue presented here — that is, the ability of the State to regulate fishing in its waters — relates to questions of state-wide importance, and the answers to these questions will have repercussions far beyond this individual case.

Second, the primary issue in this case involves a challenge to regulations based upon the Alaska Constitution, Article VIII. The case therefore implicates issues beyond the criminal law and involves a vital part of our state’s economy. Expertise in natural resources law and Indian law rather than criminal law would be particularly helpful.

Accordingly, we respectfully request that the Supreme Court accept our certification of this appeal under AS 22.05.015(b) and assume jurisdiction over this case.

Entered at the direction of the Court.

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August 5, 2019

Clerk of the Appellate Courts



Ryan Montgomery-Sythe, Chief Deputy Clerk

cc: Supreme Court Justices  
Court of Appeals Judges  
Judge Miller  
Ketchikan Trial Court Clerk

Distribution:

A Cristina Weidner-Taft  
Law Office of A, Cristina Weidner-Taft  
310 K Street Ste 200  
Anchorage AK 99501

Phillip Paul Weidner  
Weidner & Associates, APC  
943 W. 6th Avenue, Suite 300  
Anchorage AK 99501

Kathryn Vogel  
Assistant Attorney General  
1031 W. 4th Ave., Ste. 200  
Anchorage AK 99501